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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,798	12/20/2001	Christopher Peter Olson	KCC-16,452	9411

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT PAPER NUMBER

3761

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/027,798

Applicant(s)

OLSON ET AL.

Examiner

Jacqueline F. Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/18/05.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 and 46-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-41, 46-59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 8/18/05 have been fully considered but they are not persuasive. In response to applicant's argument that there is no suggestion to modify the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Glaug teaches a toilet training aid that is used with an absorbent article. Glaug teaches the training aid can be combined with the absorbent article in manufacturing. The *combination* of the toilet training aid and the absorbent article creates a training pant where the wearer can feel a dimensional change or temperature change in order to facilitate training. The *combination* of the training aid and the absorbent article solves the same purpose as the claimed invention. Therefore, the examiner maintains that it would be obvious to one of ordinary skill in the art to combine the training aid and the absorbent article since forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-41 and 46-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glaug et al. USPN 5702376

As to claims 1, 2, and 16-18, Glaug discloses a disposable training pant comprising: an outer cover, a body side liner, and an absorbent core. Glaug discloses the claimed invention except for Glaug discloses a separate swellable training aid attachable to the training pant. It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the training aid and absorbent article, since it has been held that "forming in one piece an article which has formerly

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been formed in two pieces and put together involves only routine skill in the art.”

Howard v. Detroit Stove Works, 150 U.S. 164 (1893). The training aid of Glaug is swellable to up to 10 times its dry thickness (col. 15, lines 40-50 and col. 16, lines 4-27).

Glaug does not specifically disclose an overall absorbent capacity of about 300 g or less. However, Glaug recognizes the absorbent capacity of the training aid should be very low – about 6 grams or less – in order for the wearer to have a wet sensation and know that wetting is occurring. The training aid combined with the training pant of Glaug has the same properties (expansion upon liquid insult) and is used in the same environment as applicant’s training pant. Therefore, the general conditions of the claimed invention are present in the prior art. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the invention of Glaug with the claimed absorbent capacity of the present invention, since “where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation”, *In re Aller* et al. 105 USPQ 233.

As to claims 3-9, Glaug discloses a thickness of the dimensional change member in the range of .9mm (col. 15, lines 60-62), which is included in the claimed range.

As to claims 10-12 Glaug discloses the dimensional change member has a width of at least about 25 mm, and at least about 50 mm (col. 14, lines 50-66)

As to claims 13-15 Glaug discloses the dimensional change member has a length within the claimed ranges (col. 14, lines 50-66)

As to claim 19, Glaug discloses the dimensional change member comprises a high swelling absorbent material (col. 16, lines 28-41).

As to claim 20, Glaug discloses the absorbent article further comprising a surge layer 52 placed over the dimensional change member (Figure 6).

As to claims 21, 22, and 38-40, Glaug discloses a disposable training pant comprising: an outer cover, a body side liner, and an absorbent core. Glaug discloses the claimed invention except for Glaug discloses a separate swellable training aid attachable to the training pant. It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the training aid and absorbent, since it has been held that "forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art." *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893). The training aid of Glaug is swellable to up to 10 times its dry thickness (col. 15, lines 40-50 and col. 16, lines 4-27).

Glaug does not specifically disclose the absorbent core having a total absorbent capacity not greater than about three times an anticipated insult volume. However, Glaug teaches dimensional change member is swellable to a final wet thickness at least about three times greater than its initial dry thickness of the absorbent core ((col. 15,

lines 40-50 and col. 16, lines 4-27). Applicant discloses in the specification, page 23 lines 11-19, a total absorbent capacity not greater than about three times an anticipated insult volume, an article that accommodates an insult having a volume of about 30 grams (g) to about 100 g, desirably about 60 g to about 80 g. Based on applicant's disclosure, the examiner interprets the above mentioned portion of the claim as being limited to an absorbent article with an absorbent capacity of about 300 grams or less. Although Glaug does not disclose a specific absorbent capacity, Glaug recognizes the absorbent capacity of the training aid should be very low – about 6 grams or less – in order for the wearer to have a wet sensation and know that wetting is occurring. The training aid combined with the training pant of Glaug has the same properties (expansion upon liquid insult) and is used in the same environment as applicant's training pant. Therefore, the general conditions of the claimed invention are present in the prior art. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the invention of Glaug with the claimed absorbent capacity of the present invention, since "where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation", *In re Aller* et al. 105 USPQ 233.

As to claims 23-31, Glaug discloses a thickness of the dimensional change member in the range of .9mm and a wet height of about 9.5 mm (col. 15, lines 60-63), which is included in the claimed range.

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As to claims 32 and 33 Glaug discloses the dimensional change member has a width of at least about 25 mm, and at least about 50 mm (col. 14, lines 50-66)

As to claims 34-37, Glaug discloses the dimensional change member has a length within the claimed ranges (col. 14, lines 50-66)

As to claim 41, Glaug discloses the dimensional change member comprises a high swelling absorbent material (col. 16, lines 28-41).

As to claims 46, 47, 57, and 58, see discussion of claims 1 and 21 supra. Glaug describes the material for the dimensional change member as an expandable foam, compressed cellulose sponges, and particularly expandable foams having open, large cell, reticulated structures (col. 16, lines 28-35). It is well known that any of the aforementioned materials would create a void area upon swelling.

As to claims 48-54, Glaug discloses a thickness of the dimensional change member in the range of .9mm and a wet height of about 9.5 mm (col. 15, lines 60-63), which is included in the claimed range.

As to claim 55, Glaug discloses the dimensional change member has a width of at least about 25 mm, and at least about 50 mm (col. 14, lines 50-66)

As to claim 56, Glaug discloses the dimensional change member has a length within the claimed ranges (col. 14, lines 50-66)

As to claim 59, Glaug discloses the dimensional change member comprises a high swelling absorbent material (col. 16, lines 28-41).

Conclusion

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jacqueline F Stephens
Examiner
Art Unit 3761

November 07, 2005